HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(C) NO. 6408/2007

PETITIONER Ms. Savitri Jhariya, aged about 32 years, W/o. Shatrughan Prasad Jhariya, President of Rani Self Help Group, Village Mandalatola, Gram Panchayat Mandalaltoai, R/o. Village Mandalatola, Distt. Kawardha (Kabirdham) (CG)

Vs.

RESPONDENTS

1. State of Chhattisgarh, Through Collector, Distt. Kabirdham
2. Sub-Divisional Officer (Revenue), Kawardha (CG)

WRIT PETITION UNDER ARTILCE 226 OF THE CONSTITUTION OF INDIA

(**SB:** Hon'ble Mr. **Satish K. Agnihotri, J.**)

Shri Sudhir Verma, counsel for the petitioner.
Shri Arvind Dubey, Panel Lawyer for the State.

O R D E R
(Passed on this 25th day of October, 2007)

1. The petitioner was allotted a fair price shop of Gram Panchayat Mandalatola, Sub-Division Bodla, District Kabirdham on 15.09.2005. On account of certain irregularities found by the authorities, a show cause notice dated 18.11.2005 (Annexure P/6) was issued calling upon the petitioner to explain as to why the allotment of the shop be not cancelled under the provisions of Public Distribution System (Control) Order 2004 and under the provisions of Section 3 read with Section 7 of the Essential Commodities Act, 1955.

2. The petitioner submitted response to the said notice on 21.11.2005 (Annexure P/7) explaining her conduct and praying for sympathetic consideration and consigning the show cause notice to the record.

3. After having considered the representation of the petitioner, Sub-Divisional Officer (Revenue) Kawardha by order dated 26.11.2005 (Annexure P/8) cancelled the allotment of the fair price shop under the provisions of Clause 11(3) (5) of the C.G. Public Distribution

System (Control) Order 2004 (hereinafter referred to as "the order") and Section 3 read with Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as "the Act").

4. The petitioner thereafter preferred an appeal before the Collector, Kabirdham (Kawardha) who, after having considered all the facts, dismissed the appeal holding that the order dated 26.11.2005 passed by the Sub-Divisional Officer was just and proper.

5. Being aggrieved, the petitioner has preferred this petition under Article 226 of the Constitution of India. On query, learned counsel appearing for the petitioner submits that though the impugned order dated 31.05.2007 passed by the Collector is quasi-judicial in nature, however, the petitioner preferred to file this petition seeking a writ in the nature of mandamus to call for the records and a writ in the nature of certiorari to quash the impugned order.

6. On further query as to whether any statutory or fundamental right is violated or likely to be violated, learned counsel for the petitioner submits that a show cause notice was issued pursuant to some preliminary enquiry wherein the petitioner was not given opportunity to put forward his case. Thus, this impugned order passed by the Collector deserves to be quashed.

7. I have heard learned counsel appearing for the parties and perused the records. On perusal of the records, it is evident that the show cause notice was not issued on the basis of any enquiry. If there was any preliminary enquiry, no notice was required to be given to the petitioner as the show cause notice was issued on 18.11.2005 to which the petitioner has filed his reply on 21.11.2005. The petitioner had sufficient opportunity to put forward his case in the reply. The allotment order was cancelled by order dated 26.11.2005 on account of violation of Clause 11(3) (5) of the order and under the provisions of Section 3 read with Section 7 of the Act.

8. The petitioner has failed to produce the Control order as well as the provisions of the Act.

9. I have gone through the provisions of Section 3 read with Section 7 of the Essential Commodities Act, 1955. Section 7 of the Essential Commodities Act, 1955 prescribes that if any person contravenes any order under Section 3- he shall be punishable for imprisonment or his property may be forfeited etc. Clause 11(3) & (5) of the order provides for making all essential entires in the ration cards and essential commodities should not be sold without ration card.

10. The authorities instead of imposing punishment of imprisonment or forfeiting the property, has chosen to cancel the allotment of the fair price shop in favour of the petitioner.

11. The argument of the counsel for the petitioner that the authorities have no right to cancel the allotment is without any basis and his allotment was cancelled for violation of the provisions of Clause 11 (3)(5) of the Order.

12. Looking from any angle, the petitioner has not established any semblance of a fundamental right or a legal right which have been allegedly violated. The impugned order of cancellation of fair price shop was passed after affording proper opportunity of hearing to the petitioner.

13. This Court in exercise of the power under Article 226 of the Constitution of India cannot decide question of fact as the same has attained finality before the Collector in Appeal.

14. Thus, there is no merit in this case and this petition deserves to be and is dismissed summarily.

Sd/-
Satish K. Agnihotri
Judge

Suguna